

Message Text

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ACTION L-02

INFO OCT-01 EUR-12 EA-06 IO-10 ISO-00 SSO-00 NSCE-00

USIE-00 INRE-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 OIC-02 CIAE-00

DODE-00 INR-07 NSAE-00 PA-01 PRS-01 INT-05 FEA-01

DLOS-03 OFA-01 AF-06 ARA-06 NEA-09 COME-00 AGR-05

/119 W

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FM AMEMBASSY TOKYO

TO SECSTATE WASHDC IMMEDIATE 9176

INFO AMEMBASSY BONN

AMEMBASSY LONDON

USMISSION EC BRUSSELS

USMISSION GENEVA

USMISSION OECD PARIS

USMISSION USUN NY

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FOR L AND IO/CMD

E.O. 11652: N/A

TAGS: ECOSOC, UN, OCON

SUBJ: FOURTH MEETING COMMITTEE ON NATURAL RESOURCES - TOKYO,
MARCH 24-APRIL 4, PERM. SOV. NATURAL RESOURCES

REF: A. STATE 075390

B. TOKYO 4301

SUMMARY. U.S. DEL BELIEVES IT HAS ACHIEVED SUBSTANTIAL COM-
PLIANCE WITH INSTRUCTIONS REFTEL A BY FORCING A FAVORABLE
RULING FROM CHAIR ON ISSUE OF "CONSENSUS" IN CONTEXT OF
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SERIES OF PROCEDURAL INTERVENTIONS BY USDEL UPON ADOPTION

OF RES. ITEM 4 AGENDA CONTAINING TWO UNACCEPTABLE REFERENCES TO NIEO AND CERDS WHICH RULING IS APPLICABLE TO RES. ITEM 7 REPORTED REFTEL B. END SUMMARY.

1. "GENTLEMEN'S AGREEMENT" ON VOTING IN CNR CONTAINED IN PARA 10 OF CNR DECISION ON "ORGANIZATION OF THE SESSION" ADOPTED AT OPENING OF MEETING. PARA 10 IS TEXT OF "GENTLEMEN'S AGREEMENT" ADOPTED AT FIRST MEETING CNR AS FOLLOWS: QUOTE THE COMMITTEE AGREES TO TAKE DECISIONS BY CONSENSUS. IN THE EVENT CONSENSUS NOT POSSIBLE BUT A MAJORITY READILY DISCERNIBLE, THE COMMITTEE WILL DECIDE THE MATTER ACCORDINGLY. THE FACT THERE IS SOME DISAGREEMENT WITH THE DECISION WILL BE RECORDED IN THE REPORT, TOGETHER WITH THE REASONS FOR THE DISAGREEMENT. END QUOTE.

2. IN ACTION ON RES ITEM 4 USDEL (AMB FERGUSON) "OBJECTED TO AND RESERVED" ON PARAS OF RES. "BEARING IN MIND RELEVANT PROVISIONS OF THE DECLARATION AND PROGRAM OF ACTION FOR THE ESTABLISHMENT OF INNER QUOTE THE END INNER QUOTE NEW INTERNATIONAL ECONOMIC ORDER AND OF THE CHARTER OF ECONOMIC RIGHOJ AND DUTIES OF STATES AND THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES END QUOTE AND PARA QUOTE UNDERLINES THE IMPORTANCE OF PROMOTING CO-OPERATION AMONG DEVELOPING COUNTRIES IN THE FIELD OF NATURAL RESOURCES WITHIN THE FRAMEWORK OF INTERDEPENDENCE AS PROVIDED FOR BY THE PROGRAM OF ACTION FOR THE ESTABLISHMENT OF THE NEW INTERNATIONAL ECONOMIC ORDER AND WITHOUT PREJUDICE TO OVER-ALL COOPERATION. END QUOTE.

3. FYI. BY PRIOR AGREEMENT BETWEEN AMB FERGUSON AND UKDEL (FRED HOHLER) ON FIRST MENTION OF "ADOPTION BY CONSENSUS" UK WOULD REQUEST RULING OF CHAIR ON WHETHER CONSENSUS EXISTED AND AMB FERGUSON WOULD CONSTRUE PARA 10 "GENTLEMEN'S AGREEMENT" TO EFFECT THAT NO CONSENSUS COULD EXIST ON FACE OF EITHER A RESERVATION OR OBJECTION. END FYI. DESPITE PRIOR "ADVICE" BY AMB FERGUSON TO FRG DEL THAT IN STATING "OBJECTIONS" ON UNACCEPTABLE PARAS ON NIEO AND CERDS IT NOT REFER TO "ADOPTION BY CONSENSUS", FRG DEL NONETHELESS "RESERVED ON ADOPTION BY CONSENSUS" OF RES. WHEREUPON UK REQUESTED RULING BY CHAIR THAT RES NOT ADOPTED BY CONSENSUS. URUGUAY LIMITED OFFICIAL USE

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THEN REQUESTED RULING THAT RES ADOPTED BY CONSENSUS. IRAQ AND T AND T INTERVENED IN SUPPORT OF URUGUAY REQUEST, T AND T DEL ASSERTED THAT IN ABSENCE OF VOTING ANY ADOPTION WAS A "CONSENSUS" IN TERMS OF PARA 10 "GENTLEMEN'S AGREEMENT." FERGUSON INTERVENED TO ACCUSE T AND T DEL OF CIRCULAR REASONING AND MISCONSTRUCTION OF PARA 10. HER POSITION WAS "EITHER CONSENSUS OR REJECTION" WHILE FERGUSON ASSERTED THAT PARA 10 EXPRESSLY PROVIDED FOR ADOPTION "BY A MAJORITY READILY DIS-

CERIBLE" WHILE THOSE IN MINORITY "WERE IN DISAGREEMENT" WITH ADOPTION IN TERMS PARA 10. THEREFORE MINORITY BY EXPRESSING DISAGREEMENT (I.E., U.S., U.K., FRG, ITALY, AUSTRIA) WERE EXERCISING THE ALTERNATIVE TO A "NO" VOTE AND MUST BE RECORDED IN REPORT AS "OBJECTING TO ADOPTION BY A DISCERIBLE MAJORITY." FEGUSON CONCLUDED BY REQUESTING RULING OF CHAIR IN ACCORDANCW TIH FERGUSON'S CONSTRUCTION OF PARA JKPM

4. CHAIR RULED THAT RES NOT RPT NOT ADOPTED BY CONSENSUS BUT WAS ADOPTED "BY A MAJORITY READILY DISCERNIBLE" AND "OBJECTIONS TO ADOPTION WOULD BE REFLECTED IN THE REPORT." USDEL HAS FOLLOWED UP WITH RAPPORTEUR (CANADA) TO ASSURE CHAIR'S RULING IMPLEMENTED.

5. IRAQI DEL INFORMED AMB FERGUSON THAT IN LIGHT OF CHAIR'S RULING HENCE FORTH G-77 WILL NOT BE "FLEXIBLE" (SIC) AND WILL FORCE ADOPTION OF THEIR "UNALTERED RESOLUTIONS" SINCE USG DESTROYED USEFUL DEVICE OF "CONSENSUS WITH RESERVATION".(5

6. IN LIGHT OF FOREGOING DEVELOPMENTS AMB FERGUSON, ON PERM SOV RES INTENDS, (A) TO STATE USG POSITION IS THAT NO MEMBER STATE CAN BE DENIED VOTE IN UN WHEN IT SO REQUESTS, HOWEVER, (B) IN VIEW OF "GENTLEMEN'S AGREEMENT" ADOPTED AT TIME WE WERE NOT MEMBER WE WILL NOT INSIST ON VOTE AT THIS TIME, BUT (C) USG OBJECTION TO ADOPTION OF ENTIRE PER SOV RES IS OUR EXERCISE OF ALTERNATIVE TO "NO" VOTE AND IN ACCORDANCE WITH CHAIR'S RULING ON ITEM 4 RES., POSITION MUST BE SO REFLECTED IN RECORD.

7. COMMENT BY AMB FERGUSON. I AM RELUCTANT TO FORCE ISSUE OF FORMAL VOTE FOR FOLLOWING REAONS (A) IN VIEW OF ADOPTION BY CNR OF "GENTLEMEN'S AGREEMENT" OUR REQUEST WOULD LIKELY BE RULED OUT OF ORDER THUS CREATING UNFORTUNATE PRECEDNET LIMITED OFFICIAL USE

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ON EVEN OF 7TH SPECIAL SESSION, (B) IF CHAIR FULES IN OUR FAVOR, RULING WOULD CLEARLY BE OVERRIDDEN CREATING EVEN MORE DAMAGING NEGATIVE PRECEDENT--E.G. CANADIANS AND THE NETHERLANDS INFORM US THAT THOUGH THEY ACCEPT USG BASIC POSITION ON RIGHT OF MEMBER STATE TO VOTE, THEY BELIEVE "GENTLEMEN'S AGREEMENT" WOULD RENDER USG REQUEST FOR VOTE "OUT OF ORDER" (C) I DO NOT WANT TO PUT USG IN POSITION OF ASSERTING WE ARE NOT BOUND BY ACTIONS OF COMMITTEE TAKEN WHEN WE NOT MEMBERS WHEN ON VERY RES AT ISSUE, G-77 IS TAKING THE POSITION THEY NOT BOUND BY PRINCIPLES OF INTERNATIONAL LAW DEVELOPED WHEN THEY WERE NOT FULL INDEPENDNET MEMBERS OF INTERNATIONAL COMMUNITY, AND BELIEVE WE HAVE ACHIEVED FOR FIRST TIME VERY SIGNIFICANT BREAKTHROUGH FOR OUR PTDITION THAT THERE IS SIGNIFICANT DISTRINCTION BETWEEN "CONSENSUS" AND FORMS OF ADOPTION WITHOUT VOTE AND DO NOT

WISH TO LOSE BUT RATHER PRESERVE THE SUBSTANCE OF CHAIR'S
RULING SUPRA.

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8. JUST AT COMPLETION OF DRAFTING OF FOREGOIN, CNR REACHED
ACTION ON PERM SOV RES AMB FERGUSON EXECUTED PARA 7 SUPRA.
INDICATING THAT RES WAS "COMPLETELY, TOTALLY AND WHOLLY UN-
ACCEPTABLE TO THE U.S." USG WAS EXERCISING ITS AVAILABLE
OPTION UNDER PARA 10 TO INTERPOSE ITS OBJECTION TO ADOPTION
OF RES AND US ACTION IS EQUIVALENT TO A "NO" VOTE NOT MERELY
A RESERVATION. THE US POSITION WAS COMPLETELY REPEAT COM-
PLETELY SUPPORTED BY FOLLOWING DELS: FRG, CANADA, JAPAN,
ITALY, SWEDEN, NORWAY, FRANCE, AUSTRIA, UK, NETHERLANDS

AND AUSTRALIA.

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9. CHAIR RULED HE "DISCERNED NO CONSENSUS FOR RESOLUTION"
BUT HE DID DISCERN "A MAJORITY FOR ADOPTION AND ALL DIS-
AGREEMENTS AND OBJECTIONS TO ADOPTION WOULD BE APPROPRIATELY
REFLECTED IN RECORD IN ACCORD WITH PARA 10."
SHOESMITH

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